

201215015



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L. 402.08-00

JAN 19 2011

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XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

T:EP:RA'+3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
Plan X = XXXXXXXXXXXXXXXXXXXX
Company K = XXXXXXXXXXXXXXXXXXXX
Credit Union B = XXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXX
Amount E = XXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxx:

This is in response to a request dated xxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxx, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 70, represents that she received a distribution from Plan X totaling Amount E. Taxpayer A asserts that her failure to accomplish a timely rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to Credit Union B's error in not depositing Amount E into an Individual Retirement Account (IRA). Taxpayer A intended to rollover Amount E to a rollover IRA maintained with Credit Union B.

Taxpayer A was previously employed by Company K, and a participant in Plan X. Taxpayer A was concerned with the investment performance and potential loss of funds in her account in Plan X and on Date 1 requested a complete distribution of funds in her account in Plan X. Taxpayer A's intention was to roll the funds over into an IRA and place the funds in a conservative investment.

Taxpayer A chose Credit Union B as the financial institution to open an IRA. Taxpayer A instructed Company K to make the distribution check out directly to Credit Union B. Company K issued the distribution check in the amount of Amount E payable to Credit Union B IRA Rollover for the benefit of Taxpayer A and mailed the check to Taxpayer A.

On Date 2 Taxpayer A presented the distribution check which was made payable to Credit Union B to the teller at Credit Union B with instructions to deposit the check in an IRA. However, an error was committed by the teller and Amount E was deposited into a non-IRA account.

On Date 3 Taxpayer A requested and received a distribution of Amount C from the IRA into which she thought the teller of Credit Union B had deposited Amount E. At this point in time Taxpayer A discovered that Amount E had been deposited into a non-IRA account.

Taxpayer A did every thing necessary to effect the desired rollover to an IRA within the 60 day rollover period and she believed that the rollover had been completed.

Documentation submitted by Credit Union B, acknowledges that the breakdown in its procedures was the source of its error in not making a correct rollover of Amount E.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D (Amount E less Amount C).

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property

distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount E was caused by Credit Union B's error in not depositing Amount E into a rollover IRA.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D (Amount E less Amount C). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being forwarded to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxx
SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,


for Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose

Cc: xxxxxxxxx